

**REMARKS**

Claims 1-21 were pending in this application.

Claims 1-21 have been rejected.

Claims 1, 9, and 17 have been amended as shown above.

Claims 1-21 remain pending in this application.

Reconsideration and full allowance of Claims 1-21 are respectfully requested.

**I. AMENDMENTS TO CLAIMS**

The Applicant has amended Claims 1, 9, and 17 to define when an operand is “committed” and “virtually committed.” These amendments incorporate the definitions of “committed” and “virtually committed” contained in the Applicant’s specification.

These amendments do not require a new search. The Applicant has repeatedly pointed out that the specification defines “committed” and “virtually committed.” The MPEP is crystal clear regarding how to interpret claim terms. The claims must be given their broadest reasonable interpretation that is “consistent with the specification.” (*MPEP § 2111*). This means that the claim terms must be given their plain meaning “unless applicant has provided a clear definition in the specification.” (*MPEP § 2111.01*).

The Applicant has provided clear definitions for “committed” and “virtually committed” in the specification, and the January 13, 2004 Office Action represents the fourth action on the merits. The Patent Office was required, for all four actions on the merits, to consider the definitions in the Applicant’s specification when examining the claims. The Patent Office

cannot now assert that a new search is required when the Applicant has only amended the claims to recite definitions that the Patent Office should have considered all along.

Moreover, the Patent Office clearly shows in the June 3, 2003 Office Action that it previously examined the claims using these definitions. In particular, the June 3, 2003 Office Action clearly attempts to show that one of the cited references anticipates supplying an operand when the operand is “virtually committed” using the appropriate definition. (*06/03/03 Office Action, Page 7, Paragraph 13*).

For these reasons, the amendments to Claims 1, 9, and 17 do not require a new search and comply with 37 C.F.R. § 1.116.

## II. REJECTION UNDER 35 U.S.C. § 102

The Office Action rejects Claims 1, 9, and 17 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,141,747 to Witt (“*Witt*”). This rejection is respectfully traversed.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

*Witt* recites that data is stored in a store queue (element 64) for storage in a cache

(element 44). (*Col. 12, Lines 18-20*). Once the data is stored in the cache, the data is deleted from the store queue. (*Col. 16, Lines 62-63*).

The Patent Office asserts that a person skilled in the art would “recognize that an operand waiting in the store queue” of *Witt* has been “virtually committed.” (*Office Action, Page 7, Paragraph 13*). The Applicant respectfully traverses this assertion.

First, this interpretation of “virtually committed” contradicts the express definition contained in the Applicant’s specification and claims. The specification and claims clearly state that an operand is “virtually committed” when it is transferred from an operand queue into a buffer. (*Application, Page 19, Lines 3-6*). The Office Action relies on the store queue (element 64) of *Witt* as anticipating the “operand queue” recited in Claims 1, 9, and 17. (*Office Action, Page 3, First paragraph*). As a result, an operand is not “virtually committed” when it has been stored in the store queue of *Witt* since, according to the Patent Office’s position, the operand has only been stored in an “operand queue.” In order to establish that an operand has been “virtually committed” in *Witt*, the Patent Office must show that the operand in the store queue of *Witt* has been transferred into a buffer. The Patent Office cannot make that showing. Based on this, the Patent Office cannot interpret the phrase “virtually committed” as it does in the Office Action.

Second, the Applicant has amended Claims 1, 9, and 17 to recite that an operand is “committed” when “written to [an] external memory” and that the operand is “virtually committed” when “written to a buffer for storage in the external memory.” *Witt* expressly recites that data in the store queue is deleted once it is stored in a data cache. Based on this, once data is “committed” to the data cache of *Witt*, the data is deleted from the store queue and cannot be

supplied from the store queue to satisfy a read instruction. Moreover, *Witt* lacks any mention of a buffer capable of storing data to be written to a memory. As a result, *Witt* lacks any mention of “virtually” committing data by transferring it from the store queue to a buffer and then later storing the data in the cache.

For these reasons, *Witt* fails to anticipate the Applicant’s invention as recited in Claims 1, 9, and 17. Accordingly, the Applicant respectfully requests withdrawal of the § 102 rejection and full allowance of Claims 1, 9, and 17.

### III. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejects Claims 2-5, 10-13, and 18-21 under 35 U.S.C. § 103(a) as being unpatentable over *Witt* in view of U.S. Patent No. 5,721,855 to Hinton et al. (“*Hinton*”). The Office Action rejects Claims 6-8 and 14-16 under 35 U.S.C. § 103(a) as being unpatentable over *Witt* and *Hinton* in view of U.S. Patent No. 5,987,593 to Senter et al. (“*Senter*”). These rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce

evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

As noted above in Section II, Claims 1, 9 and 17 are patentable. As a result, Claims 2-8, 10-16, and 18-21 are patentable due to their dependence from allowable base claims.

Accordingly, the Applicant respectfully requests withdrawal of the § 103 rejection and full allowance of Claims 2-8, 10-16, and 18-21.

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IV. **CONCLUSION**

As a result of the foregoing, the Applicant asserts that all claims in the application are in condition for allowance and respectfully requests an early allowance of such claims.

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SUMMARY

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at [wmunck@davismunck.com](mailto:wmunck@davismunck.com).

The Commissioner is hereby authorized to charge any additional fees connected with this communication (including any extension of time fees) or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

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